

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**DAVID SKILLIN, on behalf of  
himself and other similarly situated  
current or former employees of Rady  
Children's Hospital - San Diego,**

Plaintiff.

V.

## RADY CHILDREN'S HOSPITAL — SAN DIEGO,

Defendant.

Case No. 14-cv-01057-BAS(BLM)

**ORDER GRANTING  
PLAINTIFF'S MOTION TO  
REMAND**

(ECF No. 6)

On March 26, 2014, Plaintiff David Skillin (“Plaintiff”) commenced this representative action against Defendant Rady Children’s Hospital – San Diego (“Defendant”) in San Diego Superior Court alleging claims for violation of California Labor Code sections 221 through 224 and 226. Defendant removed this action to federal court on April 28, 2014 pursuant to 28 U.S.C. §§ 1331, 1441(a) and (c), and 1446 (a), (b), and (d) on the grounds of federal question jurisdiction. (ECF No. 1.) Defendant claims Plaintiff’s causes of action substantially depend upon interpretation of a collective bargaining agreement and are thus preempted under section 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185, and Plaintiff’s Complaint states a claim that falls under the preemptive scope of the Employee

1 Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, *et seq.* (*Id.*)

2 Plaintiff now moves to remand this action to Superior Court. (ECF No. 6.)

3 Plaintiff further seeks attorney fees incurred in bringing the motion to remand. (*Id.*)

4 Defendant also moves for judgment on the pleadings. (ECF No. 9.) The Court held  
5 oral argument on the motions on July 22, 2015. For the following reasons, the Court

6 **GRANTS** Plaintiff’s motion to remand and **DENIES** Plaintiff’s request for  
7 attorneys’ fees. As the case is remanded to Superior Court, Defendant’s motion for  
8 judgment on the pleadings is moot.

9 **I. BACKGROUND**

10 Plaintiff has been employed by Defendant since 1997 as a Cardiovascular  
11 Technologist/Anesthesia Technologist. (ECF No. 1-3 (“Compl.”) at ¶ 1.) Plaintiff  
12 is employed as a nonexempt employee in the “public housekeeping industry,” as  
13 defined by Wage Order 5, Section 2(P). (*Id.* at ¶ 5.) Prior to February 7, 2014,  
14 Plaintiff alleges that he and other similarly situated current or former employees had  
15 the option of choosing to have either a percent of their salary or a fixed amount  
16 deducted from their paychecks and credited to their 403(b) retirement accounts. (*Id.*  
17 at ¶ 6.)

18 Plaintiff asserts that he chose the fixed amount option and provided written  
19 authorization for Defendant to deduct \$700.00 per pay period for deposit into his  
20 403(b) account. (*Id.* at ¶ 9.) He contends that other employees made the same  
21 election to have a fixed amount deducted. (*Id.* at ¶ 6.) Plaintiff further alleges that  
22 on or about January 19, 2014, Defendant implemented a change whereby deductions  
23 for employees’ 403(b) retirement accounts became a percent of the employees’  
24 salaries at a percentage unilaterally determined by Defendant and implemented  
25 without written authorization by affected employees, including Plaintiff. (*Id.* at ¶ 7.)  
26 The change was allegedly communicated to affected employees via email on January  
27 29, 2014. (*Id.*) Consequently, Plaintiff alleges Defendant deducted \$1,351.21 from  
28 Plaintiff’s paycheck on February 7, 2014, which was approximately 18% of his

1 salary, and thereafter at approximately 18% per paycheck, which consistently  
 2 amounted to greater than \$700.00 per pay period. (*Id.* at ¶¶ 9-10.)

3 As a result of Defendant's actions, Plaintiff asserts that he is experiencing a  
 4 severe negative cash flow seriously affecting his financial status and that, although  
 5 the unauthorized deductions from his paycheck were credited to his 403(b) retirement  
 6 account, he cannot withdraw the funds without significant penalties (*Id.* at ¶ 14.)  
 7 Plaintiff also alleges that since February 7, 2014, Defendant has failed to provide him  
 8 with full and accurate itemized wage statements as required by California Labor Code  
 9 section 226. (*Id.* at ¶¶ 16, 17.) Plaintiff contends that other former and current  
 10 employees have been similarly affected by Defendant's actions. (*Id.* at ¶¶ 15, 17-  
 11 18.)

12 Plaintiff commenced this action on March 26, 2014 as a representative action  
 13 under California's Private Attorney General Act of 2004 ("PAGA"), Labor Code §§  
 14 2698, *et seq.*, on behalf of himself and all current and former employees of Defendant  
 15 who performed work for Defendant between January 1, 2014 and the present and  
 16 who had unauthorized deductions made from their paychecks and who received  
 17 inaccurate wage statements. (*See id.* at ¶¶ 19-22.) Plaintiff asserts two causes of  
 18 action, the first for a violation of California Labor Code sections 221-224 and the  
 19 second for a violation of California Labor Code section 226. (*See id.* at ¶¶ 25-37.)

20 Defendant removed this action on April 28, 2014 based on federal question  
 21 jurisdiction. (ECF No. 1.) In support of removal, Defendant attached a copy of a  
 22 collective bargaining agreement between Defendant and United Nurses of Children's  
 23 Hospital ("UNOCH") Technical Division (hereinafter referred to as the "CBA").  
 24 (ECF No. 1-2 at ¶ 2, Ex. A.) The CBA was effective from July 1, 2013 through June  
 25 30, 2016. (*Id.* at ¶ 2 and CBA.) Defendant contends – and Plaintiff does not dispute  
 26 – that Plaintiff is a member of UNOCH, a labor organization. (*Id.* at ¶ 3.)

27 As a member of UNOCH, Plaintiff's employment is governed by the terms of  
 28 the CBA, which references and incorporates a 403(b) plan in Article XVIII, entitled

1 “Retirement.” (CBA at p. 24.) The parties do not dispute that the 403(b) plan  
 2 constitutes an employee pension benefit plan under ERISA. Defendant is the plan  
 3 administrator and a fiduciary under the 403(b) plan. (See ECF No. 11-1 at ¶ 3, Ex.  
 4 B at § 1.51 and § 7.01(G).) Article XVIII of the CBA provides, in relevant part, as  
 5 follows:

6 **Section 1801. Continuation of Plans:** Except as hereinafter provided,  
 7 RCHSD shall maintain, during the term of this Agreement, for all  
 8 employees who began employment prior to July 1, 2014, the defined  
 9 benefit pension plan and the retirement savings plan that it had in effect  
 10 on the effective date of this Agreement, or substantially equivalent  
 11 plans. . . .

12 **Section 1802. Eligibility:** The requirements for eligibility and  
 13 participation in each such plan shall be governed by the terms of said  
 14 plan and may be modified from time to time in accordance with the  
 15 terms of the plans.

16 **Section 1803. Current Retirement Savings Plan:** The Retirement  
 17 Savings Plan in effect on the effective date of this Agreement provides  
 18 for the following contributions based on completed years of service for  
 19 eligible employees hired before June 30, 2014:

17 <b>Years of Service</b>	18 <b>Percentage of Total</b>
19	Employee/Contributions (up to a maximum of 8% of employee's total annual earnings to be matched by RCHSD)
20 0-5	25%
21 6-10	30%
22 11-15	35%
23 16-20	45%
24 21-25	55%
25 26+	65%

26 (CBA at pp. 24-25.)

27 The CBA further provides that the agreement “fully and completely sets forth  
 28 all existing understandings and obligations between the parties, that it constitutes the

1 entire agreement between the parties, and that it sets forth all of [Defendant's]  
 2 responsibilities, duties and obligations to UNOCH and Bargaining Unit employees  
 3 for the duration of th[e] [a]greement, and that *there are no understandings or*  
 4 *agreements by the parties which are not expressly set forth in th[e] [a]greement.*"  
 5 (*Id.* at pp. 27-28 (Section 2302) (emphasis added).)

6 **II. LEGAL STANDARD**

7 "Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life*  
 8 *Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "They possess only that power authorized  
 9 by Constitution or a statute, which is not to be expanded by judicial decree." *Id.*  
 10 (internal citations omitted). "It is to be presumed that a cause lies outside this limited  
 11 jurisdiction, and the burden of establishing the contrary rests upon the party asserting  
 12 jurisdiction." *Id.* (internal citations omitted); *see also Columbia Riverkeeper v. U.S.*  
 13 *Coast Guard*, 761 F.3d 1084, 1091 (9th Cir. 2014).

14 Consistent with the limited jurisdiction of federal courts, the removal statute is  
 15 strictly construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564,  
 16 566 (9th Cir. 1992); *see also Sygenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32  
 17 (2002); *O'Halloran v. Univ. of Wash.*, 856 F.2d 1375, 1380 (9th Cir. 1988). "The  
 18 strong presumption against removal jurisdiction means that the defendant always has  
 19 the burden of establishing that removal is proper." *Gaus*, 980 F.2d at 566; *see also*  
 20 *Nishimoto v. Federman-Bachrach & Assocs.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990);  
 21 *O'Halloran*, 856 F.2d at 1380. "Federal jurisdiction must be rejected if there is any  
 22 doubt as to the right of removal in the first instance," *Gaus*, 980 F.2d at 566, or "[i]f  
 23 at any time before final judgment it appears that the district court lacks subject matter  
 24 jurisdiction...." 28 U.S.C. § 1447(c).

25 In general, a claim may only be removed on the basis of federal question  
 26 jurisdiction if a federal issue appears on the face of the plaintiff's well-pleaded  
 27 complaint. *See Okla. Tax Comm'n v. Graham*, 489 U.S. 838, 840-41 (1989). Thus,  
 28 "the existence of a federal defense normally does not create statutory 'arising under'

1 jurisdiction.” *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004) (“*Davila*”)  
 2 (quoting *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908)). However,  
 3 an exception to the well-pleaded complaint rule allows for the removal of claims  
 4 involving areas of the law Congress has statutorily preempted to the extent that “any  
 5 civil complaint raising th[e] [preempted claim] is necessarily federal in character.”  
 6 *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64 (1987). “This is so because ‘[w]hen  
 7 the federal statute completely pre-empts the state-law cause of action, a claim which  
 8 comes within the scope of that cause of action, even if pleaded in terms of state law,  
 9 is in reality based on federal law.’” *Davila*, 542 U.S. at 208 (quoting *Beneficial Nat.*  
 10 *Bank v. Anderson*, 539 U.S. 1, 8 (2003)).

11 **III. DISCUSSION**

12 **A. California Labor Law**

13 Under California law, it is “unlawful for any employer to collect or receive  
 14 from an employee any part of wages theretofore paid by said employer to said  
 15 employee.” Cal. Lab. Code § 221. This right cannot “in any way be contravened or  
 16 set aside by a private agreement, whether written, oral, or implied.” Cal. Lab. Code  
 17 § 219(a). “[I]n case of any wage agreement arrived at through collective bargaining”  
 18 it is unlawful to withhold from an employee “any part of the wage agreed upon,”  
 19 although an employer may “withhold or divert any portion of an employee’s wages .  
 20 . . when a deduction to cover health and welfare or pension plan contributions is  
 21 expressly authorized by a collective bargaining or wage agreement.” Cal. Lab. Code  
 22 § 222, 224. It is further unlawful, where a “statute or contract requires an employer  
 23 to maintain the designated wage scale, . . . to secretly pay a lower wage while  
 24 purporting to pay the wage designated by statute or by contract.” Cal. Lab. Code §  
 25 223. In addition, every employer must provide its employees, either semimonthly or  
 26 at the time of each payment of wages, “an accurate itemized statement in writing  
 27 showing (1) gross wages earned, . . . (4) all deductions, provided that all deductions  
 28 made on written orders of the employee may be aggregated and shown as one item,

1 [and] (5) net wages earned . . . .” Cal. Lab. Code § 226(a).

2 **B. ERISA**

3 Congress enacted ERISA “as a comprehensive legislative scheme ‘to promote  
4 the interests of employees and their beneficiaries in employee benefit plans.’” *WSB*  
5 *Elec., Inc. v. Curry*, 88 F.3d 788, 791 (9th Cir. 1996) (quoting *Shaw v. Delta Air*  
6 *Lines, Inc.*, 463 U.S. 85, 90 (1983)). “By enacting such a broad scheme, Congress  
7 also sought to protect employers by ‘eliminating the threat of conflicting or  
8 inconsistent State and local regulation of employee benefit plans.’” *Id.* (quoting  
9 *Shaw*, 463 U.S. at 99).

10 ERISA has two separate preemption doctrines, complete preemption under  
11 Section 502(a), 29 U.S.C. § 1132(a), and conflict preemption under Section 514(a),  
12 29 U.S.C. § 1144(a). *Marin General Hosp. v. Modesto & Empire Traction Co.*, 581  
13 F.3d 941, 944-46 (9th Cir. 2009). Only complete preemption provides a basis for  
14 federal question removal jurisdiction. *Id.* Therefore, on Plaintiff’s motion to remand,  
15 the only question before this Court is whether Plaintiff’s state law claims are  
16 completely preempted under Section 502(a), and thus whether the case was properly  
17 removed from state to federal court. If the asserted state law causes of action come  
18 within the scope of Section 502(a)(1)(B), those causes of action are completely  
19 preempted, and the only possible cause of action is under Section 502(a)(1)(B). *Id.*  
20 at 946. In that event, a federal district court has federal question jurisdiction under  
21 28 U.S.C. §§ 1331 (original jurisdiction) or 1441(a) (removal jurisdiction) to decide  
22 whether the plaintiff has stated a cause of action under Section 502(a). *Id.*

23 In order to determine whether an asserted state law cause of action comes  
24 within the scope of Section 502(a), the following two-prong test is applied: “[a] state-  
25 law cause of action is completely preempted if (1) ‘an individual, at some point in  
26 time, could have brought [the] claim under ERISA § 502(a)[],’ and (2) ‘where there  
27 is no other independent legal duty that is implicated by a defendant’s actions.’” *Id.*  
28 (quoting *Davila*, 542 U.S. at 210). The two-prong test is conjunctive, in that a state

1 law cause of action is only preempted if both prongs are satisfied. *Id.* at 947.

2 The first prong asks whether a plaintiff at some point in time could have  
 3 brought his or her state law claim under Section 502(a). *Id.* (citing *Davila*, 542 U.S.  
 4 at 210.) Section 502(a)(1)(B) empowers a participant or beneficiary of an ERISA  
 5 plan to bring a civil action “to recover benefits due to him under the terms of his plan,  
 6 to enforce his rights under the terms of the plan, or to clarify his rights to future  
 7 benefits under the terms of the plan.” 29 U.S.C. § 1132(a)(1)(B). Thus, “[i]f a  
 8 participant or beneficiary believes that benefits promised to him under the terms of  
 9 the plan are not provided, he can bring suit seeking provision of those benefits.”  
 10 *Davila*, 542 U.S. at 210. Under Section 502(a)(3), a participant, beneficiary, or  
 11 fiduciary of an ERISA plan may also “enjoin any act or practice which violates any  
 12 provision of this subchapter or the terms of the plan.” 29 U.S.C. § 1132(a)(3). “The  
 13 question under the second prong of *Davila* is whether ‘there is no other independent  
 14 legal duty that is implicated by a defendant’s actions.’” *Marin*, 581 F.3d at 949  
 15 (quoting *Davila*, 542 U.S. at 210). “If there is some other independent legal duty  
 16 beyond that imposed by an ERISA plan, a claim based on that duty is not completely  
 17 preempted under § 502(a)(1)(B).” *Id.*

18 Here, Plaintiff brings a representative action on behalf of himself and current  
 19 or former employees of Rady alleging violations of California Labor Code sections  
 20 221 through 224 and 226. (See Compl. at ¶¶ 4, 25-37.) Plaintiff alleges that  
 21 Defendant withheld earned wages without proper authorization in violation of  
 22 California law and failed to provide accurate itemized wage statements because of  
 23 the improperly withheld wages, also in violation of California law. Defendant first  
 24 argues removal was proper because Plaintiff’s claims “clearly implicate ERISA’s  
 25 remedial scheme and (at least arguably) could have been brought under ERISA  
 26 section 502(a) permitting suits by ERISA plan participants for breach of fiduciary  
 27 duty or violation of the terms of the ERISA plan.” (ECF No. 11 (“Opp.”) at p. 14,  
 28 line 27 to p. 15, line 2.) In response, Plaintiff asserts that he has not alleged any

1 causes of action outlined in ERISA section 502(a). (ECF No. 15 (“Reply”) at p. 2.)  
 2 Plaintiff further asserts that he is not claiming any remedy provided by his ERISA  
 3 plan or by Section 502(a) in that he is not seeking a refund from his ERISA plan and  
 4 is not enforcing any benefit due under the plan. (*Id.* at p. 4.)

5 Unlike *Davila* and *Cleghorn v. Blue Shield of Cal.*, 408 F.3d 1222 (9th Cir.  
 6 2005), in which the Supreme Court and the Ninth Circuit found complete preemption  
 7 under section 502(a)(1)(B), this case does not involve the denial of coverage for  
 8 medical care. In *Davila*, the Supreme Court, after review of the applicable complaint,  
 9 state statute, and various plan documents, found that “[i]t is clear . . . that respondents  
 10 complain only about denials of coverage promised under the terms of ERISA-  
 11 regulated employee benefit plans.” *Davila*, 542 U.S. at 212. Thus, upon the denial  
 12 of benefits, the Supreme Court found “respondents could have paid for the treatment  
 13 themselves and then sought reimbursement through a § 502(a)(1)(B) action, or sought  
 14 a preliminary injunction.” *Id.* In finding complete preemption, both the Supreme  
 15 Court in *Davila* and the Ninth Circuit in *Cleghorn* relied on the fact that the only  
 16 factual basis for relief pleaded in each complaint was the refusal to be reimbursed for  
 17 the emergency medical care that was received, and any duty or liability that the plan  
 18 provider had to reimburse the individual only existed because of the provider’s  
 19 administration of an ERISA-regulated benefit plan. *See id.* at 211-12; *Cleghorn*, 408  
 20 F.3d at 1225-26.

21 Here, Plaintiff has not been denied a benefit promised to him under the terms  
 22 of his ERISA-regulated plan. Plaintiff is entitled to his full wages by virtue of  
 23 California law, unless he, or the CBA, expressly authorize otherwise. *See Cal. Lab.*  
 24 *Code §§ 221, 222, 224.* No provision of the CBA expressly authorizes the deduction  
 25 at issue, as the CBA is silent on the issue of deductions. Plaintiff is also not seeking  
 26 to enforce his rights under the plan, or clarify any of his rights or future benefits under  
 27 the plan. Moreover, any duty or liability that Defendant has not to deduct an amount  
 28 greater than the amount authorized does not exist only because of Defendant’s

1 administration of an ERISA-regulated plan. Rather, Defendant's alleged duties or  
 2 liabilities arise independently from state law. Thus, the Court finds that neither prong  
 3 has been satisfied and Plaintiff's state law claims do not come within the scope of  
 4 Section 502(a).

5 Defendant's primary argument in support of complete preemption relies on a  
 6 section 514(a) analysis. Defendant argues that "both the federal courts and the  
 7 Department of Labor have found that state laws that regulate deductions made from  
 8 employee earnings are preempted by ERISA when the statutes are sought to be  
 9 applied to deductions made to fund an ERISA plan." (Opp. at p. 11.) In support of  
 10 this argument, Defendant cites almost in full a Department of Labor opinion letter  
 11 examining a Kentucky statute similar to California Labor Code sections 221-224, and  
 12 finding conflict preemption under Section 514(a). (*Id.* at pp. 11-13.) Defendant also  
 13 cites an unpublished Fourth Circuit decision, *Jackson v. Wal-Mart Stores, Inc.*, 24 F.  
 14 A'ppx. 132 (4th Cir. 2001), finding that ERISA preempted the application of a South  
 15 Carolina statute on the basis of conflict preemption (*id.* at p. 13), and requests judicial  
 16 notice of two Department of Labor Advisory Opinions also finding preemption under  
 17 Section 514(a) (ECF No. 12). However, as discussed above, only complete  
 18 preemption provides a basis for this Court's jurisdiction. "[A] defense of conflict  
 19 preemption under § 514(a) does not confer federal question jurisdiction on a federal  
 20 district court." *Marin*, 581 F. 3d at 945.

21 Given the foregoing, the Court finds that ERISA does not completely preempt  
 22 Plaintiff's complaint, and therefore does not provide a basis for removal.

23 **C. LMRA**

24 Defendant also removed this matter on the ground that Plaintiff's claims are  
 25 preempted under section 301 of the LMRA "since Plaintiff's claims substantially  
 26 depend upon the interpretation of a collective bargaining agreement." (ECF No. 1 at  
 27 pp. 1-2.) "Section 301 is on its face a jurisdictional statute, under which '[s]uits for  
 28 violation of contracts between an employer and a labor organization representing

1 employees in an industry affecting commerce . . . , may be brought in any district  
 2 court of the United States having jurisdiction of the parties.”” *Cramer v. Consol.*  
 3 *Freightways, Inc.*, 255 F.3d 683, 689 (9th Cir. 2001) (citing 29 U.S.C. § 185(a)); *see*  
 4 *also Local 159, 342, 343 & 444 v. Nor-Cal Plumbing, Inc.*, 185 F. 3d 978, 984 (9th  
 5 Cir. 1999). The LMRA completely preempts “claims founded directly on rights  
 6 created by collective-bargaining agreements, and also claims substantially dependant  
 7 on an analysis of a collective bargaining agreement.” *Cramer*, 255 F.3d at 689  
 8 (internal quotations and citation omitted); *see also Balcorta v. Twentieth Century-*  
 9 *Fox Film Corp.*, 208 F. 3d 1102, 1107-08 (9th Cir. 2000).

10 However, “not every claim which requires a court to refer to the language of a  
 11 labor-management agreement is necessarily preempted.” *Balcorta*, 208 F. 3d at 1108  
 12 (quoting *Associated Builders & Contractors, Inc. v. Local 302 Intern. Broth. of Elec.*  
 13 *Workers*, 109 F. 3d 1353, 1357 (9th Cir. 1997)). “In order to help preserve state  
 14 authority in areas involving minimum labor standards, the Supreme Court has  
 15 distinguished between claims that require interpretation or construction of a labor  
 16 agreement and those that require a court simply to ‘look at’ the agreement.” *Id.*  
 17 (citing *Livadas v. Bradshaw*, 512 U.S. 107, 123-26 (1994)).

18 Plaintiff argues that he does not bring a claim for breach of the CBA or any  
 19 specific provision of the CBA, and that he does not claim that Defendant violated any  
 20 rights granted to him by the CBA. (ECF No. 6-1 (“Mot.”) at p. 16.) Rather, Plaintiff  
 21 contends his “claims arise solely under California’s state wage and hour laws.” (*Id.*  
 22 at line 26.) Plaintiff further asserts that “an interpretation of the CBA is not required.”  
 23 (Reply at p. 6, lines 21-22.)

24 In response, Defendant first argues that Plaintiff alleges violations of the CBA  
 25 because the complaint asserts that the wage deductions at issue are not authorized by  
 26 the CBA. (Opp. at pp. 18-19.) However, the complaint does not allege that  
 27 Defendant violated the CBA, only that the CBA does not expressly authorize the  
 28 deductions at issue. (See Compl. at ¶ 13 (“None of [Defendant’s] collective

bargaining agreements authorize [Defendant] to make deductions greater than the amount authorized by the employee.”) This allegation is relevant only because under California law, an employer is prohibited from withholding any part of a wage agreed upon, unless that deduction is “*expressly* authorized by a collective bargaining or wage agreement.” *See* Cal. Lab. Code §§ 222, 224 (emphasis added). Thus, the Court does not find that Plaintiff alleges a violation of the CBA.

Defendant next argues that resolution of Plaintiff's claims will require interpretation and application of the CBA to determine whether the CBA expressly authorized the deductions at issue. (Opp. at pp. 19-21.) During oral argument, Defendant, acknowledging that the CBA is silent on the issue, asserted that its right to deduct more than Plaintiff authorized is “implied” in the CBA, and that it is an arbitrator’s role to interpret the CBA and determine this implied right. In support of this argument, Defendant has requested that the Court take judicial notice of a July 7, 2015 Arbitrator’s Opinion and Award rendered in an arbitration dispute between Defendant and UNOCH. (See ECF No. 20.)<sup>1</sup> The arbitrator was asked to determine whether Defendant violated Section 1801 of the CBA “when it unilaterally changed the manner in which the employees contributed to their 403(b) retirement savings plans from a flat-dollar contribution to a percentage contribution on January 19, 2014.” (*Id.* at p. 2.) The arbitrator ultimately determined that Defendant “did not violate Section 1801 of UNOCH CBAs by its unilateral change to the employees’ 403(b) Retirement Savings Plan wherein it eliminated the flat-dollar contribution.” (*Id* at p. 15.) The arbitrator also determined that “[n]otwithstanding [Defendant] having acted within its contractual rights to eliminate the flat-dollar option, it is evident the Hospital failed to deduct appropriate contributions. For one or more bargaining-employees, entirely too little or too much money was deducted.” (*Id.* at

<sup>1</sup> The Court takes judicial notice of the Arbitrator's Opinion and Award. *See Klahn v. Quizmark, LLC*, No. C 13-1977 MMC, 2013 WL 4605873, at \*1, n.4 (N.D. Cal. Aug. 28, 2013); Fed. R. Evid. 201.

1 p. 14.)

2 While Defendant requested judicial notice of this Opinion and Award for the  
3 purpose of demonstrating that interpretation of the CBA is required to resolve the  
4 claims in Plaintiff's complaint, the issue presented to the arbitrator is not the issue  
5 before this Court. And as the arbitrator pointed out, regardless of whether or not  
6 Defendant acted within its contractual rights to eliminate the flat-dollar contribution  
7 option, Defendant still failed to deduct the appropriate, authorized contributions.  
8 Plaintiff here alleges Defendant deducted entirely too much money – more than the  
9 amount authorized – in violation of California law. Neither the CBA nor the  
10 arbitrator's Opinion and Award suggest that interpretation and application of the  
11 CBA is required to determine whether Defendant deducted more than the authorized  
12 amount.

13 Moreover, an “implied” authorization to deduct wages is insufficient. *See* Cal.  
14 Lab. Code §§ 219(a), 221, 224. Thus, the Court finds interpretation of the CBA,  
15 which is notably silent on the issue, will not be required to determine whether the  
16 wage deductions at issue are authorized by the CBA, and thus whether Defendant is  
17 liable on Plaintiff's claims.

18 For the foregoing reasons, the Court finds that Plaintiff's complaint is not  
19 preempted by section 301 of the LMRA.

20 **D. Attorney's Fees and Costs**

21 “An order remanding the case may require payment of just costs and any actual  
22 expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C. §  
23 1447(c). The standard for awarding fees turns on the “reasonableness of the  
24 removal.” *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). “Absent  
25 unusual circumstances, courts may award attorney's fees under § 1447(c) only where  
26 the removing party lacked an objectively reasonable basis for seeking removal.” *Id.*  
27 A district court retains the “discretion to consider whether unusual circumstances  
28 warrant a departure from the rule in a given case.” *Id.* Here, the Court does not find

1 that Defendant lacked an objectively reasonable basis for seeking removal, and  
2 therefore declines to award attorney's fees and costs under 28 U.S.C. § 1447(c).

3 **IV. CONCLUSION & ORDER**

4 For the foregoing reasons, Plaintiff's motion to remand is **GRANTED**. The  
5 Clerk of Court is **DIRECTED** to remand this action to San Diego Superior Court.

6 **IT IS SO ORDERED.**

7  
8 **DATED: August 7, 2015**

  
9 **Hon. Cynthia Bashant**  
10 **United States District Judge**

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28